

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of the Commission's)	WT Docket No. 06-49
Part 90 Rules in the 904-909.75 and)	
919.75-928 MHz Bands)	

COMMENTS OF CELLNET TECHNOLOGY, INC.

Cellnet Technology, Inc. ("Cellnet")¹ hereby submits comments on the Notice of Proposed Rulemaking ("NPRM") in the above referenced proceeding.² In the NPRM, the Federal Communications Commission ("FCC" or "Commission") seeks comment on proposed changes to the Commission's rules governing the licensing and use of frequencies in the 904-909.75 MHz and 919.75-928 MHz portions of the 902-928 MHz band by Part 90 multilateration Location and Monitoring Service ("M-LMS") licensees. In addition to these comments, Cellnet is a signatory to, and strong supporter of, the Comments being filed in this proceeding by the Part 15 Coalition ("Coalition"). Cellnet supports the Coalition's opposition to the proposed rule changes to the extent they would undermine the use of spectrum in the 904-909.75 MHz and 919.75-928 MHz frequency bands by unlicensed Part 15 devices by increasing the potential for harmful interference from M-LMS. Cellnet also endorses the Coalition's objection to any change to the "safe harbor" provisions for unlicensed Part 15 devices, any change to the

¹ Cellnet is the leading provider of real-time automated meter reading ("AMR"), distribution automation ("DA"), and supervisory control and data acquisition ("SCADA ") solutions to the utility industry. Based in Atlanta, Georgia, Cellnet supplies gas, water, and electric utilities with highly reliable, field-proven products that enable them to communicate with many types of remote devices using wireless and IP network communications. Using a combination of Part 101 Multiple Address System ("MAS") licenses and spread spectrum Part 15 devices operating in the 902-928 MHz band, Cellnet has created a low-cost telemetry services network used for the remote monitoring and control of devices, primarily utility meters.

² *In the Matter of Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands*, Notice of Proposed Rulemaking, WT Docket No. 06-49, FCC No. 06-24 (rel. March 7, 2006) ("NPRM").

requirement for field testing of M-LMS devices to ensure they do not cause unacceptable interference to Part 15 devices, and any expansion of the permissible uses of M-LMS that would increase the power, power spectral density, or duty cycle of M-LMS devices in sufficient degree to threaten harmful interference to Part 15 devices.

Cellnet is participating in this proceeding because it has a strong interest in protecting the technical integrity of the various bands in which unlicensed Part 15 devices have generally proliferated to the substantial benefit of consumers. Cellnet and its predecessors have actively participated in many FCC proceedings dealing with the use of the 902-928 MHz band, principally to assure that it remains a viable band for low-power, efficiently engineered systems on a heavily shared basis.³

As Cellnet has discussed in these FCC proceedings, for a band to be shared cooperatively all eligible users should be required to play by the established rules. Cellnet opposes changes in established rules that are designed to advantage only some users of the band while disadvantaging other incumbent users, especially when those rules were adopted by the Commission after a careful balancing of interests and are relied upon by the other incumbents. In Cellnet's view, the most significant conclusion that must be reached from the current record presented by Progeny (the only LMS licensee who advocates in favor of a change in the rules) is that the existing rules are adequate for licensees to provide the services and facilities for which the rules were designed and on which those licensees valued the spectrum in bidding competitively for them in auctions. The problem is simply that there may not be an adequate market for *those* services and facilities.

³ Cellnet, for example, has installed over 10 million end points in its expanding network of AMR services, substantially aiding the efficiency and effectiveness of our nation's energy utilities at a time when energy prices and availability are important issues for both federal and state policy makers.

It has never been the Commission's responsibility to ensure the commercial success of its licensees; rather, the Commission must weigh the public interest in maximizing the uses of spectrum to meet the needs of the consuming public. In this case, there is virtually no evidence that the types of services that Progeny would prefer to offer are not already being satisfied in a plethora of other radio services *already* available to consumers at reasonable costs. On the other hand, the proposed rule changes, and the expanded services which might be offered, clearly threaten the viability of this band for the millions of critical non-licensed devices which already operate in this spectrum.

As Cellnet has consistently noted in opposing Progeny's efforts to change the rules for this band, the carefully crafted compromise that resulted from the 1995 LMS rulemaking⁴ has not merely allowed for the continued operation of then-existing unlicensed Part 15 products and services, but has actually resulted in the significant expansion of the use of the band for many advanced technologies and public-safety oriented devices.

⁴ *Amendment of Part 90 of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems*, PR Docket No. 93-61, *Report and Order*, 10 FCC Rcd 4695, 4709 (1995) ("*Report and Order*").

There are now tens of millions of consumer-benefiting Part 15 devices operating in the band, and it is incumbent on the Commission to assure that the band continues to accommodate such uses. Progeny's proposals have a high degree of likelihood of benefiting only Progeny at the significant expense of this band's availability for non-licensed uses. No changes to the rules should be made that would have such a result.

Respectfully submitted,

/s/
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